

ESTTA Tracking number: **ESTTA223577**

Filing date: **07/11/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	PARAMOUNT BED COMPANY, LIMITED		
Entity	Corporation	Citizenship	JAPAN
Address	14-5 HIGASHI SUNA 2-CHOME KOTO-KU, JAPAN		

Attorney information	Amy J. Benjamin Darby & Darby PC 250 Greenwich Street New York, NY 10007 UNITED STATES tmdocket@darbylaw.com, abenjamin@darbylaw.com, ssaxon@darbylaw.com Phone:212-527-7700
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Registration Subject to Cancellation

Registration No	1542562	Registration date	06/06/1989
Registrant	SIMMONS COMPANY 6 EXECUTIVE PARK DRIVE, N.E. ATLANTA, GA 30329 UNITED STATES		

Goods/Services Subject to Cancellation

Class 020. First Use: 1987/01/00 First Use In Commerce: 1987/01/00
All goods and services in the class are cancelled, namely: MATTRESSES AND BOX SPRINGS

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	01611475.pdf (4 pages)(30690 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/amy j benjamin/
Name	Amy J. Benjamin
Date	07/11/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PARAMOUNT BED COMPANY, LIMITED,	-----X	
	:	
Petitioner,	:	Cancellation No. _____
	:	(Registration No. 1,542,562)
v.	:	
	:	
SIMMONS COMPANY,	:	
	:	
Respondent.	:	
	-----X	

PETITION TO CANCEL

Petitioner, Paramount Bed Company, Limited (“Petitioner”), a corporation organized and existing under the laws of Japan, having its principal place of business at 14-5 Higashi Suna 2-chome, Koto-ku, Japan, through its undersigned attorneys believes that it is being damaged by Registration No. 1,542,562 and hereby petitions to cancel the same.

As grounds therefore, it is alleged as follows:

1. Upon information and belief, Simmons Company (“Respondent”) is shown as the current owner of Registration No. 1,542,562 in TARR and is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 6 Executive Park Drive, N.E., Atlanta, Georgia 30329.

2. Upon information and belief, on May 17, 1988, Respondent filed Application Serial No. 73/728,990 for the mark PARAMOUNT, claiming a date of first use of January 31, 1987.

3. Upon information and belief, Application Serial No. 73/728,990 subsequently matured into Registration No. 1,542,562 for the mark PARAMOUNT covering “mattresses and box springs” in Class 20.

4. Upon information and belief, on April 19, 2002, Applicant assigned the mark PARAMOUNT, Registration No. 1,542,562 and the goodwill associated therewith, to Dreamwell, Ltd. ("Dreamwell"), a Delaware corporation with a principal place of business in Las Vegas, Nevada. Said assignment was recorded with the Assignment branch on June 20, 2002 at Reel 2537 and Frame 0937.

5. Upon information and belief, Respondent and Dreamwell are related companies in that Dreamwell is a subsidiary of Respondent.

6. Upon information and belief, Dreamwell is the current owner of Registration No. 1,542,562.

7. Upon information and belief, the release of an earlier filed security interest was recorded with the Assignment branch on January 16, 2004, at Reel 2784 and Frame 0362.

8. Upon information and belief, as a result of the release which was recorded on January 16, 2004, TARR was incorrectly updated to show Respondent as the current owner when in fact, Dreamwell is the current owner of Registration No. 1,542,562.

9. On October 11, 2007, Petitioner filed Application Serial No. 77/301,428 for the mark PARAMOUNT BED for "beds and bedside cabinets" in Class 20.

10. In an Office Action dated January 22, 2008, the Examining Attorney refused registration of Petitioner's mark PARAMOUNT BED under Section 2(d) of the Trademark Act on the ground that there was a likelihood of confusion with Registration No. 1,542,562 for the mark PARAMOUNT.

11. Upon information and belief, Respondent does not use and has not used the PARAMOUNT mark in commerce for at least the last three (3) consecutive years.

12. Upon information and belief, Dreamwell does not use and has not used the PARAMOUNT mark in commerce for at least the last three (3) consecutive years.

13. Upon information and belief, as a result of the nonuse of the PARAMOUNT mark, the PARAMOUNT mark and Registration No. 1,542,562 have been abandoned by Respondent and/or

Dreamwell and, therefore, is subject to cancellation under Section 14 of the Trademark Act, 15 U.S.C. §1064(3).

14. Accordingly, Registration No. 1,542,562 for the mark PARAMOUNT should be cancelled.

WHEREFORE, Petitioner requests that Registration No. 1,542,562 be cancelled.

Respectfully submitted,

DARBY & DARBY P.C.

Date: July 11, 2008

By: 

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Attorneys for Petitioner
Paramount Bed Company, Limited

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing PETITION TO CANCEL was served via first class mail, postage prepaid, this 11th day of July 2008 upon Respondent at the following address:

Simmons Company
6 Executive Park Drive, N.E.
Atlanta, Georgia 30329

and upon Dreamwell, Ltd. at the following address:

Dreamwell, Ltd.
2325 Renaissance Drive
Suite B
Las Vegas, Nevada 89119-6144

A handwritten signature in black ink, appearing to read "Keren Pines", is written over a horizontal line.